calendar day after the date of the announcement in the FEDERAL REGISTER. Notice of final acceptance will be given and the order issued within a reasonable time.

(g) If the Commission receives one or more requests that it not finally accept an agreement, it shall, within a reasonable time, either finally accept or reject the agreement after considering the requests. The Commission shall promptly issue and serve an order indicating its decision.

(1) If the agreement is accepted, the Commission shall issue the complaint and order. The order is a final order in disposition of the proceeding and is effective immediately upon its service on the consenting party under these rules. The consenting party shall thereafter be bound by and take immediate action in accordance with the final order.

(2) If the agreement is rejected, the order so notifying the consenting party shall constitute withdrawal of the Commission's provisional acceptance. The Commission may then issue its complaint, may order further investigation, or may take any action it considers appropriate.

(h) An agreement that has been finally accepted may be vacated or modified upon petition of any party or the Commission's own initiative. The petition shall state the proposed changes in the agreement and the reasons for granting the petition. The Commission may modify or vacate where (1) false statements were relied upon in accepting the agreement or (2) there are changed conditions of fact or law. In deciding whether to grant a petition, the Commission shall consider the public interest. A petitioner, or the Commission when acting on its own initiative, shall serve a copy of the petition or notice of reconsideration, respectively, on all parties. Parties affected by the petition or notice of reconsideration may file a response within 10 calendar days. No replies shall be accepted. The Commission shall decide the petition or notice of reconsideration within a reasonable time and, by order, shall indicate its decision and its reasons.

PART 1119—CIVIL PENALTY FACTORS

Sec.

AUTHORITY: 15 U.S.C. 2058, 2063, 2064, 2067(b), 2068, 2069, 2076(e), 2084, 1261, 1263, 1264, 1270, 1273, 1278, 1191, 1192, 1193, 1194, 1195, 1196.

SOURCE: 74 FR 45106, Sept. 1, 2009, unless otherwise noted.

§ 1119.1 Purpose.

This part sets forth the Consumer Product Safety Commission's (Commission) interpretation of the statutory factors considered in determining the amount of civil penalties the Commission may seek or compromise.

§ 1119.2 Applicability.

Application. This part applies to all civil penalty determinations the Commission may seek or compromise under the Consumer Product Safety Act (CPSA) (15 U.S.C. 2051–2089), the Federal Hazardous Substances Act (FHSA) (15 U.S.C. 1261–1278), and the Flammable Fabrics Act (FFA) (15 U.S.C. 1191–1204). Any person who knowingly violates a prohibited act set forth in section 19 of the CPSA, section 4 of the FHSA, or section 5(e) of the FFA is subject to a civil penalty.

§ 1119.3 Definitions.

For purposes of this rule the following definitions apply:

(a) *Product defect* means a product or substance that is associated with a prohibited act under the CPSA, FHSA, or FFA, including the meaning of defect as referenced in the CPSA and defined in Commission regulations at 16 CFR 1115.4. Where applicable and where the term ''number of defective products distributed'' is used it shall include ''amount of substance distributed'' for purposes of violations under the FHSA.

(b) *Violation* means a knowing violation, as defined in the CPSA, FHSA, or FFA of any prohibited act found in section 19 of the CPSA, section 4 of the FHSA, or section 5 of the FFA.

(c) *Violator* means any manufacturer, importer, distributor or retailer or any other legally responsible party who committed a knowing violation of a prohibited act under the CPSA, FHSA, or FFA and is thus subject to penalties.

§ 1119.4 Factors considered in determining civil penalties.

(a) *Statutory Factors.* (1) Section 20(b) of the CPSA, section 5(c)(3) of the FHSA and section 5(e)(2) of the FFA specify factors considered by the Commission in determining the amount of a civil penalty to be sought upon commencing an action for knowing violations of the prohibited acts section of each act. These factors are:

(i) *CPSA (15 U.S.C. 2069(b)).* The nature, circumstances, extent, and gravity of the violation, including:

(A) The nature of the product defect;

(B) The severity of the risk of injury;

(C) The occurrence or absence of injury;

(D) The number of defective products distributed;

(E) The appropriateness of such penalty in relation to the size of the business of the person charged, including how to mitigate undue adverse economic impacts on small businesses; and

(F) Such other factors as appropriate.

(ii) *FHSA (15 U.S.C. 1264(c)(3)).* The nature, circumstances, extent, and gravity of the violation, including:

(A) The nature of the substance;

(B) Severity of the risk of injury;

(C) The occurrence or absence of injury;

(D) The amount of substance distributed;

(E) The appropriateness of such penalty in relation to the size of the business of the person charged, including how to mitigate undue adverse economic impacts on small businesses; and

(F) Such other factors as appropriate.

(iii) *FFA (15 U.S.C. 1194(e)(2)).* The nature, circumstances, extent, and gravity of the violations:

(A) The severity of the risk of injury;

(B) The occurrence or absence of injury;

(C) The appropriateness of such penalty in relation to the size of the business of the person charged; and

(D) Such other factors as appropriate.

(2) *The nature, circumstances, extent and gravity of the violation.* Under this factor, the Commission will consider the totality of the circumstances surrounding a violation, including how many provisions of law were violated. The Commission will continue to look at the enumerated statutory factors, as well as other factors (as described in paragraph (b) of this section) that the Commission may determine are appropriate, and consider all of the factors in determining the civil penalty amount.

(3) *Nature of the product defect.* The Commission will consider the nature of the product hazard/substance for which a penalty is sought. A product defect under this factor includes violations for products that contain defects which could create substantial product hazards as referenced in the CPSA and defined and explained in 16 CFR 1115.4; regulatory violations of a rule, regulation, standard or ban; or product hazards presented by any other violation of the prohibited acts of section 19 of the CPSA.

(4) *Severity of the risk of injury.* Consistent with its discussion of severity of the risk at 16 CFR 1115.12, the Commission will consider, among other factors, the potential for serious injury or death (and whether any injury required actual medical treatment including hospitalization or surgery); the likelihood of injury; the intended or reasonably foreseeable use or misuse of the product; and the population at risk (including vulnerable populations such as children, the elderly, or those with disabilities).

(5) *The occurrence or absence of injury.* The Commission will consider whether injuries have or have not occurred with respect to any product associated with the violation.

(6) *The number of defective products distributed.* The Commission will consider the actual number of products or amount of substances imported or placed in the stream of commerce to distributors, retailers, and consumers.

(7) *The appropriateness of such penalty in relation to the size of the business of the person charged including how to mitigate undue adverse economic impacts on*